It is not for us to say what instructions may properly be given on a preliminary enquiry that has been concluded by the discharge of an accused person. Had it been the intention of the legislature to give the Public Prosecutor the power to direct a Magistrate to reverse his order of discharge and commit the accused for trial, this power would have been expressed in plain and clear language. Why, indeed, should the Public Prosecutor be given this unusual power, when he has an appropriate remedy in that he can order the holding of another preliminary enquiry before another Magistrate?

We have no doubt that the order made by the Public Prosecutor in this case was *ultra vires* the provisions of the Criminal Procedure Code. The appeal against the decision to discharge is dismissed.

Order accordingly.

REG. v. LIM KWANG SENG & ORS.

[O. Cr. J. (Whitton J.) December, 21, 1955]

[Singapore — Criminal Motion No. 16 of 1955]

Criminal Procedure Code, 1955, ss. 241 & 406 — Criminal Justice (Temporary Provisions) Ordinance, 1954, s. 7 — Offence bailable as of right — Application for remand in public custody — Penal Code s. 147.

In this case eight persons were charged under s. 147 of the Penal Code, which is a bailable offence. The prosecution applied that the accused be remanded in custody for four days. This was opposed by counsel for the accused, who applied for bail. The learned Magistrate purporting to act under s. 241 of the Criminal Procedure Code, 1955, made the order for remand. The case was referred to the High Court under s. 7 of the Criminal Justice (Temporary Provisions) Ordinance, 1954.

Held: (1) the special procedural provision laid down in s. 7 of the Criminal Justice (Temporary Provisions) Ordinance, 1954, could not have been intended by the Legislature to abrogate the substantive right of bail conferred by s. 406 of the Criminal Procedure Code, 1955; (2) the learned Magistrate in this case should have acceded to the request of counsel of the accused and have offered them bail before deciding to grant a postponement under s. 241 of the Criminal Procedure Code, 1955.

CRIMINAL MOTION.

T. A. Mahony (Crown Counsel) for the Crown.

K. K. Bezboruah for the accused.

Whitton J. : — In this matter eight persons charged under section 147 Penal Code were remanded in custody, on the application of the Crown, for four days, despite a request for bail by their counsel. The Eighth Magistrate in making the order purported to act under section 241 Criminal Procedure Code. The case was then referred to the High Court under section 7 of the Criminal Justice (Temporary Provisions) Ordinance, 1954.

Now under section 406 Criminal Procedure Code any person accused of a bailable offence who is prepared to give bail must be released by the Police or the Court as the case may be. Presumably in so providing, although it does not say so, the section pre-supposes the bail contemplated will be of an amount which may reasonably be considered adequate to secure the accused person's further attendance at the proceedings. As then an offence under section 147 is bailable as of right, and since I do not think the special procedural provision laid down in section 7 of the Criminal Justice (Temporary Provisions) Ordinance can have been intended by the Legislature tacitly to abrogate the important substantive right of bail conferred by section 406, I am unable to see that reference to the High Court under section 7 can have any practical effect in cases such as this where the scheduled offence is a bailable one.

In my view the Magistrate before deciding to grant a postponement under section 241 should have acceded to the request by the Counsel of the accused and have offered them bail. Had this been done no question of the accused being remanded in custody without having had the opportunity to find bail could have arisen.

On these grounds I ordered the accused be offered bail.

Order accordingly.

SEET KOW SOO v. PUBLIC PROSECUTOR

[A. Cr. J. (Storr J.) December 15, 1955]

[J. B. — Criminal Appeal No. 27 of 1955]

Labour Code (Johore), Enactment No. 82, ss. 159 and 222 — Plea of guilty by "manager" who is not "owner" of estate to offence under s. 159(ii).

In this case the appellant, the manager of Kok Ann Estate, Pontian, pleaded guilty by letter to the offence under s. 159(ii) of the Labour Code, and the President of the Sessions Court convicted him and fined him $5,000. Sub-s. (ii) of s. 159 of the Labour Code reads: "Every employer who houses any labourer in a building the state of which, or of the surroundings of which, is such as to endanger the health or safety of such labourer shall be liable on conviction to a fine not exceeding one hundred dollars for each labourer housed in such building." On appeal against the sentence, —

Held: (1) s. 222 of the Labour Code makes it clear that although a manager can be proceeded against as the "employer" and convicted and fined, yet it is the owner against whom the section is aimed and it is the owner who, if the manager did not pay the fine, would have to pay, or the fine could be levied by distress and sale of the estate; (2) in the circumstances of the case, and in view of the high price of rubber and the probable profits made by the owners, the appellant's lack of care as to the housing of the labourers was a very serious matter, and therefore the sentence imposed by the President was not manifestly excessive.